HONOURABLE SRI JUSTICE P.S. NARAYANA

+W.P.NO. 24898 of 2006

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%DATED: 29-11-2006

Shaik Jhani, trading under the name and style of J.K.Industries, s/o Khasim, aged about 55 years, Business, R/o D.No.12-7-16 and 17, Hayatkhan street, Tarapet, Vijayawada,

...
PETITIONERS

And

$Vijayawada Municipal Corporation, represented by its Commissioner, Jawaharlal Nehru buildings, Vijayawada 520 001

...
RESPONDENTS

<GIST

>HEAD NOTE:

! Counsel for the petitioner : SriV.S.R. Anjaneyulu
^ Counsel for Respondent No.1 Smt: G. Jhansi
Counsel for respondentNo.2 : Sri T.Ravi Kumar

?Cases referred:

1. 2000 (2) ALT 2

HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P.NO. 24898 of 2006

DATED: 29-11-2006

Between:-

1. Shaik Jhani, trading under the name and style of J.K.Industries, s/o Khasim, aged about 55 years, Business, R/o D.No.12-7-16 and 17, Hayatkhan street, Tarapet, Vijayawada,
2. Shaikh Imam s/o Mohd. Saleh, aged about 38 years, business, R/o D.No. 12-7-16 and 17, Hayatkhan street, Tarapet, Vijayawada,
3. K. Srinivasarao s/o Veera Raghavulu, aged about 40 years, Business, R/o D.No.12-7-16 and 17, Hayatkhan street, Tarapet, Vijayawada.

...
PETITIONERS

And

1. Vijayawada Municipal Corporation, represented by its Commissioner, Jawaharlal Nehru buildings, Vijayawada 520 001
2. The Executive Engineer-I, Circle-I, Vijayawada Municipal Corporation, Near Calera Hospital, Lambadipet, Vijayawada
3. Smt.Y.Dhanalakshmi w/o Venkata Rao, Hindu, aged 66 years, Housewife, R/o Hayatkhan street, Tarapet, Vijayawada.

...
RESPONDENTS

HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P.NO. 24898 of 2006

O R D E R

The matter is coming up for admission. Smt. Jhansi, learned Standing Counsel takes notice on behalf of the respondents 1 and 2. Sri Chidambaram, learned counsel representing Sri Ravi Kumar states that Sri Ravi Kumar had llodged a caveat on behalf of third respondent. Sri V.S.R. Anjaneyulu, learned counsel representing writ petitioners had drawn the attention of this Court to different averments made in the affidavit filed in support of the writ petition, and further had drawn the attention of this Court to the representation submitted by the writ-petitioner dated 28-01-2006, and further pointed out to the impugned order, and would maintain that the impugned order, as such, cannot be sustained in the light of the order made by this Court, dated 10-01-2006, in W.P.No. 825 of 2006. Incidentally, the learned counsel also made certain comments relating to the relationship between the parties in the context of the report, on the basis of which the said impugned order had been made.

Smt. Jhansi, learned Standing Counsel representing respondents 1 and 2 would submit that this is a case where the

landlady absolutely has no objection at all for pulling down the building in question keeping in view the public safety. When that being so, in fact, in the impugned order, the prior order was referred to, and further the representation made to the Commissioner also had been taken into consideration and the impugned order was made and hence the same being in accordance with law, the impugned order need not be disturbed by this Court.

Sri Chidambaram, learned counsel representing Sri Ravi Kumar, learned counsel for third respondent, the landlady, would demonstrate before this Court the condition in which the building is placed and would maintain that when the landlady has no objection for pulling down the building keeping in view the safety of the public, the tenants, as such, have no *locus standi*. The learned counsel also would submit that on some pretext or other the petitioners are protracting this litigation. Even otherwise, the learned counsel would submit that it cannot be said that the remedy of the landlady is under Section 12 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, in-as-much as the impugned action had been taken in accordance with law keeping in view the public safety, in the light of the provisions of the Hyderabad Municipal Corporation Act, 1955 and hence the same cannot be found fault. The learned counsel also placed strong reliance on the decision of this Court in **Smt. Aswani Desai v. Visakhapatnam Municipal Corporation and another**[1].

Heard the learned counsel.

The writ petition is filed for a writ of Mandamus declaring the proceedings TBPO-II U.C.No.18/06, dated 14-11-2006, issued by the first respondent as illegal and *ultra vires* to the provisions of Article 14 of the Constitution of India and pass such other suitable orders.

The impugned order referred to supra reads as hereunder:-

Municipal Corporation
Vijayawada,

Dated: 14-11-2006

TPBO-II U.C. No.18/06

N O T I C E

(UNDER SECTION 456 OF H.M.c. Act, 1955)

Sub:- Town Planning – Vijayawada Municipal Corporation – Complaint of Sri Md. Abdul Arif – Building Door No. 12-7-15 to 12-7-17 - Dangerous condition – Danger to the public – removal – Requested - Judgment given in W.P. No. 875/2006 – Representation of Sri Shaik Jhani & others – Regarding.

Ref:- 1) Complaint of Sri Mohammad Abdul Arif, dt. 14-11-2005
2) Remarks of E.E-I, dt. 9-12-2005
3) Judgment given in W.P. No.825/06 on the file of Hon'ble High Court, Hyderabad,
4) Representation of Sri Shaik Jhani & Others, dt. 28-1-2006

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In the reference 1st cited, Sri Mohammad Abdul Arif has given a complaint stating that the Door No. 12-7-15 to 12-7-17 are very old and they are in dilapidated condition and requested to take steps to avoid the danger to the public. The Executive Engineer-I, Vijayawada Municipal Corporation in his remarks, dt. 9-12-05 has verified the building and certified that the building Door No.12-7-15 & 12-7-16 are in dangerous condition and they have to be dismantled and D.No. 12-7-17 is partly damaged, for which repairs are to be attended immediately.

The V.M.C. has issued a notice on 17-12-05 under Section 456 of HMC Act to Sri Y.Venkata Rao to Smt. Y. Dhanalaxmi pull down the above buildings immediately or to get it strengthened in the public safety point of view.

Sri Shaik Jhani and others have approached the Hon'ble High Court requesting not to dismantle the above buildings. The Hon'ble High Court in W.P.No.825/06, has disposed off the case directing the Municipal Commissioner, V.M.C. to consider and pass appropriate orders in accordance with law after giving reasonable opportunity to the petitioners.

In the reference 4th cited, the petitioners have represented the Municipal Commissioner not to demolish the above buildings.

The Executive Engineer-I, in his remarks dt. 9-12-2005 has clearly stated that the buildings Door No. 12-7-15 to 12-7-16 are dangerous condition and they have to be pulled down and Dr. No. 12-7-17 has to repaired immediately keeping in view of the representation by the public remarks of the E.E-I, judgment given by the Hon'ble High Court in W.P.No. 825/06, you are hereby directed to pull down the Door Nos. 12-7-15, 12-7-16 and get the D.No. 12-7-17, strengthened within 7 days from the date of receipt of this notice, failing which action will be initiated as per provisions of H.M.C. Act, 1955.

Sd/-
Commissioner

To
Sri Md. Kaleesha Saheb,
S/op Khasim Saheb,
D.No.12-7-16,
Tarapet, Vijayawada.

The prior order made by this Court in W.P. No. 825 of 2006, the relevant portion thereof reads as hereunder.

> "Having regard to the facts and circumstances of the case, the respondents are directed to treat the impugned notice dated 17-12-2005 as show cause notice calling upon the petitioners to file their objections and the petitioners are also permitted to file their objections within two weeks from the date of receipt of a copy of this order. If any such objections are filed, the respondents are directed to consider and pass appropriate orders in accordance with law after giving reasonable opportunity to the petitioners, till then the respondents are directed not to pull down the said buildings in question.
>
> The writ petition is accordingly disposed of."

Several factual details narrated in the representation dated 28-01-2006 also had been pointed out. It is true that in the impugned notice, dated 14-11-2006, the said representation was referred to, and it was also specified that, in the reference 4th cited the petitioners have represented the Municipal Commissioner not to demolish the above buildings. However, it was further stated that the Executive Engineer-I, in his remarks dated 9-12-2005 had clearly stated that the buildings Door No. 12-7-15 to 12-7-16 are in dangerous condition and they have to be pulled down and Door No. 12-7-17 has to be repaired immediately. Further, the representation was referred to and the order made in W.P.No. 825 of 2006 also had been referred to and a time of seven days from the date of receipt of the notice had been specified, failing which action will be initiated as per the provisions of Hyderabad Municipal Corporation Act, 1955. Several factual details had been narrated in paras 2 to 8 of the affidavit filed in support of the writ petition.

It appears, when a notice was issued on 17-12-2005 under Section 456 of the Hyderabad Municipal Corporation Act, 1955, the writ petitioners moved this Court by way of W.P. No. 825 of 2006, and

the relevant portion of the order made by this Court already had been referred to supra. Apart from this aspect of the matter in the representation referred to certain details had been narrated, the impugned order does not refer to such details, but however, the impugned order is more based on the remarks of the Executive Engineer relating to the nature of the buildings in question. Strong reliance was placed on the decision in **Smt. Aswani Desai v. Visakhapatnam Municipal Corporation and another** *(1st cited)* wherein the learned Judge of this Court at para-7 observed,

> "The provisions of Section 12 of the Rent Act are attracted when the Rent Controller on an application made by the landlord is satisfied that the tenanted building is reasonably and bona fide required by the landlord for carrying out repairs, alterations or additions which cannot be carried out without the building vacated whereas the provisions of Sec. 456 of the HMC Act operate in a different environment. If it appears to the Commissioner of Corporation that any structure, building etc. is in a ruinous condition or likely to fall or in a way dangerous to any person occupying, resorting to or passing by, such structure may be ordered to be pulled down, ordered to be secured properly or ordered to be removed or ordered to be repaired. However, before taking any action under sub-section (1) of Section 456 as indicated herein, there is an obligation on the Commissioner to issue written notice to the owner or occupier. Therefore, in my considered opinion, insofar as the matters connected with lease, rent and eviction of buildings, the Rent Act is applicable and to that extent, it is a special law. In relation to the provisions of Section 456 of the HMC Act, which deals and which is more concerned with public interest, the interest of occupiers, owners and passers-by, the Rent Act is not a special law. In respect of a building, which is in ruinous condition, the special provision in the HMC Act is Section 456. Therefore, there is no obligation on the Commissioner of Municipal Corporation to advise the landlord to approach the Rent Controller under Section 12 of the Rent Act. Similarly, any objection by an occupier (tenant) filed before the Commissioner on the ground of Section 12 of the Rent Act is of no avail. If the fall of building is imminent, the law permits the Commissioner to take necessary action. The very purpose of the HMC Act or any Municipal Act is the

> welfare of the people and not for the welfare of a tenant who is trying to protect only his tenancy and his right to carry on some business. Right to life by the passers-by should be given precedence over the right of the tenant to carry on the business. In a given situation even when an application under Section 12 of the Rent Act is pending, still Commissioner can take an action under Section 456 of the HMC Act."

This Court is not inclined to express any opinion relating to the rights of the landlords or landladies or rights of tenants in the present context but, however, it is needless to say that under the provisions of the Hyderabad Municipal Corporation Act, 1955, the public safety may have to be kept in view, while ordering the pulling down of such structures. Whatever may be the rival contentions advanced by the learned counsel, in the light of the nature of the representation made in-as-much as in the context of the representation, no speaking order, as such, was made, in the impugned notice, in the light of the order made in W.P.No. 825 of 2006, this Court is of the considered opinion that the impugned order to be set aside remitting the matter again to the first respondent to take into consideration the contents of the representation also, apart from the remarks of the Executive Engineer-I, Circle-I, Vijayawada Municipal Corporation, which had been referred to in the impugned order and make appropriate orders, at the earliest point of time, in view of the urgency pleaded before this Court, preferably within a period of two weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed to the extent indicated above. No order as to costs.

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P.S. NARAYANA,J

Date: 29-11-2006
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[1] 2000 (2) ALT 2